



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 5, 2004

Mr. Carey Smith
Deputy Commissioner for Legal Services
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2004-2720

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 198713.

The Texas Department of Human Services (the "department") received a request for information related to a named individual and Happy Harbor Methodist Home during a specified time period. You state that some responsive information will be provided to the requestor. You claim, however, that some of the remaining requested information is excepted from disclosure under sections 552.101, 552.107, 552.111, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We begin by noting that some of the information you seek to withhold is the same type of information at issue in four pending lawsuits between the Office of the Attorney General and the department, *Texas Department of Human Services v. Abbott*, No. GN 302639, 53rd District Court, Travis County, Texas; *Texas Department of Human Services v. Abbott*, No. GN 302695, 126th District Court, Travis County, Texas; *Texas Department of Human*

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Services v. Abbott, No. GN 302802, 126th District Court, Travis County, Texas; and *Texas Department of Human Services v. Abbott*, No. GN 304028, 53rd District Court, Travis County, Texas. Furthermore, your arguments with regard to that information are similar to your arguments in the litigation of the prior rulings. Accordingly, we do not address your arguments with regard to that information and will allow the trial court to resolve the issue of whether records of the type at issue must be released to public requestors.

However, we note that you have also submitted information in the instant request for a ruling that is not the type of information that was at issue in the ruling that is the subject of the pending lawsuit. Therefore, we will address this information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes, such as sections 242.126 and 242.127 of the Health and Safety Code. Subchapter E of chapter 242 of the Health and Safety Code concerns reports of abuse and neglect at convalescent and nursing homes and related institutions. *See* Health & Safety Code §§ 242.121 *et seq.* Section 242.126(g) states that the department must make investigation reports of abuse or neglect pertaining to a facility licensed under chapter 242 public on request, but that the names of the following individuals must be withheld:

- (1) any resident, unless the department receives written authorization from a resident or the resident’s legal representative requesting the resident’s name be left in the report;
- (2) the person making the report of abuse or neglect or other complaint; and
- (3) an individual interviewed in the investigation.

Health & Safety Code § 242.126(g). Section 242.127 provides as follows: “A report, record, or other working paper used or developed in an investigation and the name, address, and phone number of any person making a report under [subchapter E, chapter 242] are confidential and may be disclosed only for purposes consistent with rules adopted by the Texas Board of Human Services or the designated agency.” Health & Safety Code § 242.127. In addition, the department adopted section 19.2010 of title 40 of the Texas Administrative Code, which applies to investigations of complaints of abuse, neglect, and exploitation at nursing facilities and related institutions. Section 19.2010 provides in part as follows:

- (a) Confidentiality. All reports, records, and working papers used or developed by [the department] in an investigation are confidential and may be released to the public only as provided below.

(1) Completed written investigation reports are open to the public, provided the report is de-identified. The process of de-identification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to [the department] as part of the investigation.

40 T.A.C. § 19.2010(a)(1). The remaining submitted documents pertain to investigations conducted under the authority of chapter 242 of the Health and Safety Code into complaints of abuse or neglect of nursing facility residents. You state that reports among these documents were created pursuant to section 242.126. Therefore, we agree that all personally identifiable information in those documents is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 242.126 of the Health and Safety Code and section 19.2010 of title 40 of the Texas Administrative Code. We further conclude that the remaining documents used or developed during the course of the underlying investigations are made confidential under section 242.127 and therefore must be withheld in their entirety. Because we are able to make this determination, we need not address your other arguments for withholding information contained in these documents.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 198713

Enc. Submitted documents

c: Ms. V. Elizabeth Ledbetter
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(w/o enclosures)